UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,708	10/30/2003	Cyril Brignone	100203274-1	1932

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EXAMINER
CHOUDHURY, AZIZUL Q

ART UNIT	PAPER NUMBER
2453	

NOTIFICATION DATE	DELIVERY MODE
07/21/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/698,708	BRIGNONE ET AL.
	Examiner	Art Unit	
	AZIZUL CHOUDHURY	2453	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>24 March 2011</u>.
2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-26</u> is/are pending in the application.
     4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-26</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
     a) ☐ All   b) ☐ Some * c) ☐ None of:
        1. ☐ Certified copies of the priority documents have been received.
        2. ☐ Certified copies of the priority documents have been received in Application No. _____.
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Reopening of Prosecution

In view of the appeal brief filed on March 24, 2011, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Krista M. Zele/

Supervisory Patent Examiner, Art Unit 2453.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 and 22-26 are rejected under 35 U.S.C. 101 because based upon

consideration of all of the relevant factors with respect to the claim as a whole, claim(s)

1-9 and 22-26 are held to claim an abstract idea, and is/are therefore rejected as

ineligible subject matter under 35 U.S.C. 101. The rationale for this finding is explained

below:

Claims 1-9 and 22-26 are directed towards computer readable storage mediums

having data structures stored thereon. While the claims cite within the preamble that

the computer readable storage medium stores data structures, the office does not

recognize such language to limit the computer readable storage medium to solely

statutory forms. It would be beneficial instead to clarify the computer readable medium

is "non-transitory" since, such a medium is deemed statutory (where supported by the

specifications). As they currently stand though, the claims 20-37 are deemed non-

statutory.

On the other hand, claims 10-21 are deemed statutory and are not subject to the

101 rejection. Claims 10-15 are directed towards a system that is positively tied to

structure. This positive association deems the claims statutory. Claims 16-21 are

directed towards a method which inherently would require a processor (structure) for

proper operation. Structural inherency is applicable only to method type claims.

Applicant may wish to review Federal Register, Volume 75, No. 143, July 27, 2010;

particularly p. 43927, the section pertaining to "Factors Weighing Toward Eligibility" and

"Factors Weighing Against Eligibility" for guidance, especially with regards to method

claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-5, 7, 12-13, 15, 18-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims feature the claim language "essentially". It is indefinite as to what amount properly constitutes "essentially".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Want et al (US Patent No: 6,122,520) in view of Philyaw (US Patent No: US

6,961,555), hereafter referred to as Want and Philyaw, respectively.

1. With regards to claims 1 and 22, Want teaches through Philyaw, a computer

   readable storage medium having a data structure disposed therein for providing

   information corresponding to a geographic location, said data structure

   comprising: a first data field for identifying said geographic location and positional

   data related to a physical location of said geographic location *(see coordinate,*

   column 2, lines 6-14 and column 3, lines 41-45, Want); and a second data field

   associated with said first data field for containing said information, said second

   field is comprising a uniform resource locator, wherein a user can access said

   information *(see URL, column 2, lines 23-26, Want)*; wherein said first data field

   and said second data field are linked such that said data structure comprising

   said positional data and said uniform resource locator related to said physical

   location functions as a virtual beacon and is downloadable to a client device near

   said physical location such that said uniform resource locator is accessible by

   said user without browsing, wherein a physical location of said client device is not

   required to be transmitted *(Want teaches the URL and coordinate information*

   (see column 2, lines 23-26, Want) being transmitted via IR beacon (virtual

   beacon) to the client device; see column 6, line 54 - column 7, line 9, Want.

   Want does not teach the transmission of a physical location); said virtual beacon

selectively provides a portion of said information to said client device on said

network, wherein said portion is based on a context relating to a user of said

client device; and said context and said information is dynamically updated

based on a condition relating to a temporal pertinence of said information

   While Want describes the URL and coordinate information being stored within

a unique URL, Want does not explicitly state the URL and geographic location

being stored within a data structure. In the same field of endeavor, Philyaw also

teaches location based data distribution; see column 2, lines 17-28, column 4,

lines 20-25 and lines 47-51, Philyaw. Philyaw teaches within the disclosure a

memory (data structure) containing a first code with URL information and a

second code with geographic location information; see column 25, lines 30-48,

Philyaw. In addition, Philyaw teaches delivering a webpage/advertising

customized based on user profile information (selectively provide a portion of

information based on user context); see at least column 23, lines 4-12, Philyaw.

Furthermore Philyaw also teaches the webpage/advertising (information)

provided to the user can be based on time (temporal pertinence); see column 14,

lines 45-65 Philyaw. Finally, Philyaw explains how the benefit of the beacon

transmitting information to a range of a location is that the users need not

transmit their location information; see at least column 2, lines 3-7 and lines 17-

28, Philyaw. The storage of geographical data and URL information within a data

structure helps location based web services to provide more accurate information

to users. Therefore it would have been obvious to one skilled in the art, during

the time of the invention, to have combined the teachings of Want with those of

Philyaw to help provide location based web pages/advertisements; see column 2,

lines 17-28, column 4, lines 47-51 and column 25, lines 54-67, Philyaw.

2. With regards to claim 2, Want teaches through Philyaw, the computer readable

    storage medium wherein said context is subject to filtering and wherein said

    filtering functions to deter locating said user *(see column 5, lines 58-67, Want).*

3. With regards to claims 3, 11 and 17, Want teaches through Philyaw, the

    computer readable storage medium wherein the receivability of said data

    structure to said client device is activated or deactivated in response to said

    condition *(see column 24, lines 9-29, Philyaw).*

4. With regards to claims 4, 12 and 18, Want teaches through Philyaw, the

    computer readable storage medium wherein said condition comprises a quality

    selected from the group consisting essentially of time and a locational aspect of

    said client device *(see column 2, lines 6-14, Want and column 14, lines 45-65*

    and column 25, lines 54-67, Philyaw).

5. With regards to claims 5, 13 and 19, Want teaches through Philyaw, the

    computer readable storage medium wherein said locational aspect comprises a

    state selected from the group consisting essentially of directional orientation, tilt

orientation, residing within a specified area of coverage, motion through said

specified area of coverage, and accessibility of said location to a position of said

client device *(see column 3, lines 41-45, Want)*.

6. With regards to claims 6, 14 and 20, Want teaches through Philyaw, the

computer readable storage medium wherein said condition comprises a

sequence of events occurring and wherein said area of coverage changes

dynamically in response to said sequence of events *(see column 7, lines 39-52,*

Want).

7. With regards to claims 7, 15 and 21, Want teaches through Philyaw, the

computer readable storage medium wherein said context comprises an attribute

of said user, said attribute selected from the group consisting essentially of

identity, profile, history, a preference, a credential, capability, an interest, and a

privacy selection *(see column 5, lines 58-67, Want)*.

8. With regards to claim 8, Want teaches through Philyaw, the computer readable

storage medium wherein said client device comprises a portable computing

device and wherein said context is stored on said portable computing device *(see*

column 2, lines 15-20, Want).

9. With regards to claims 9 and 23, Want teaches through Philyaw, the computer readable storage medium wherein said first data structure comprises latitude and a longitude *(see column 2, lines 6-14, Want)*.

10. With regards to claim 10, Want teaches through Philyaw, a network based system for selectively providing a data structure to a client device, said data structure having a first data field for identifying a geographic location and positional data related to a physical location of said geographic location and a second data field associated with said first data field containing information corresponding to said location, said second field is comprising a uniform resource locator, comprising: a filter coupled to said network for accessing context stored at said client device and on the basis of said context determining that said data structure is pertinent to a user of said client device and wherein said filter functions to deter locating said user, wherein said context and said information is dynamically updated based on a condition relating to a temporal pertinence of said information, and wherein a physical location of said client device is not required to be transmitted *(Want teaches the URL and coordinate information being read (filtered and accessed); see column 6, line 54 - column 7, line 9, Want. Want does not teach the sending of a physical location. See Philyaw below for temporal pertinence)*; a server coupled to said network for selectively furnishing said data structure to said client device on the basis of said determining, wherein said first data field and said second data field are linked

such that said data structure comprising said positional data and said uniform

resource locator related to said physical location is downloaded to said client

device when said client device is near said physical location such that said

uniform resource locator is accessible without browsing *(Want teaches the URL*

and coordinate information (see column 2, lines 23-26, Want) being transmitted

via IR beacon to the client device; see column 6, line 54 - column 7, line 9,

Want); and a database coupled to said server for storing a plurality of said data

structures and providing said data structure to said server.

While Want describes the URL and coordinate information being stored within

a unique URL, Want does not explicitly state the URL and geographic location

being stored within a data structure. In the same field of endeavor, Philyaw also

teaches location based data distribution; see column 2, lines 17-28, column 4,

lines 20-25 and lines 47-51, Philyaw. Philyaw teaches within the disclosure a

memory (data structure) containing a first code with URL information and a

second code with geographic location information; see column 25, lines 30-48,

Philyaw. In addition, Philyaw teaches delivering a webpage/advertising

customized based on user profile information (selectively provide a portion of

information based on user context); see at least column 23, lines 4-12, Philyaw.

Furthermore Philyaw also teaches the webpage/advertising (information)

provided to the user can be based on time (temporal pertinence); see column 14,

lines 45-65 Philyaw. Finally, Philyaw explains how the benefit of the beacon

transmitting information to a range of a location is that the users need not

transmit their location information; see at least column 2, lines 3-7 and lines 17-

28, Philyaw. The storage of geographical data and URL information within a data

structure helps location based web services to provide more accurate information

to users. Therefore it would have been obvious to one skilled in the art, during

the time of the invention, to have combined the teachings of Want with those of

Philyaw to help provide location based web pages/advertisements; see column 2,

lines 17-28, column 4, lines 47-51 and column 25, lines 54-67, Philyaw.

11. With regards to claim 16, Want teaches through Philyaw, a network based

method for selectively providing a data structure, said data structure having a first

data field for identifying a geographic location and positional data related to a

physical location of said geographic location and a second data field associated

with said first data field containing information corresponding to said location,

said second field is comprising a uniform resource locator, to a client device, said

method comprising: in response to a request from said client device, seeking

context that characterizes a user of said client device *(see column 4, lines 20-39,*

Want); in response to said seeking, filtering said context to deter locating said

user *(Want teaches the URL and coordinate information being read (filtered and*

accessed); see column 6, line 54—column 7, line 9, Want); upon said filtering,

determining from said context that said data structure is pertinent to said user; in

response to said determining, sending a portion of said data structure to said

client device, wherein said portion is based on said context, wherein the first data

field and said second data field are linked such that said data structure

comprising said positional data and said uniform resource locator related to said

physical location is sent to said client device when said client device is near said

physical location such that said uniform resource locator is accessible without

browsing *(Want teaches the URL and coordinate information (see column 2, lines*

23-26, Want) being transmitted via IR beacon (virtual beacon) to the client

device; see column 6, line 54 - column 7, line 9, Want); and dynamically updating

said context and said portion of said data structure based on a condition relating

to a temporal pertinence of said information and said portion of said data

structure, wherein a physical location of said client device is not required to be

transmitted *(Want does not send the physical location)*

    While Want describes the URL and coordinate information being stored within

a unique URL, Want does not explicitly state the URL and geographic location

being stored within a data structure. In the same field of endeavor, Philyaw also

teaches location based data distribution; see column 2, lines 17-28, column 4,

lines 20-25 and lines 47-51, Philyaw. Philyaw teaches within the disclosure a

memory (data structure) containing a first code with URL information and a

second code with geographic location information; see column 25, lines 30-48,

Philyaw. In addition, Philyaw teaches delivering a webpage/advertising

customized based on user profile information (selectively provide a portion of

information based on user context); see at least column 23, lines 4-12, Philyaw.

Furthermore Philyaw also teaches the webpage/advertising (information)

provided to the user can be based on time (temporal pertinence); see column 14,

lines 45-65 Philyaw. Finally, Philyaw explains how the benefit of the beacon

transmitting information to a range of a location is that the users need not

transmit their location information; see at least column 2, lines 3-7 and lines 17-

28, Philyaw. The storage of geographical data and URL information within a data

structure helps location based web services to provide more accurate information

to users. Therefore it would have been obvious to one skilled in the art, during

the time of the invention, to have combined the teachings of Want with those of

Philyaw to help provide location based web pages/advertisements; see column 2,

lines 17-28, column 4, lines 47-51 and column 25, lines 54-67, Philyaw.

12. With regards to claim 24, Want teaches through Philyaw, the computer readable
storage medium wherein said first data structure comprises a plurality of fields
wherein said fields identify said geographic location, wherein said absolute
reference comprises a plurality of coordinate systems, and wherein each field of
said plurality of fields is defined in a separate coordinate system of said plurality
of coordinate systems *(see column 5, lines 6-23, Want).*

13. With regards to claim 25, Want teaches through Philyaw, the computer readable
storage medium wherein said first data structure comprises a plurality of fields
wherein said fields identify said geographic location, wherein said relative
reference comprises a plurality of coordinate systems, and wherein each field of

said plurality of fields is defined in a separate coordinate system of said plurality

of coordinate systems *(see column 5, lines 6-23, Want)*.

14. With regards to claim 26, Want teaches through Philyaw, the computer readable

storage medium wherein said first data structure comprises a plurality of fields

wherein said fields identify said geographic location, wherein each field of said

plurality of fields is defined in a separate coordinate system of said plurality of

coordinate systems, and wherein a first field of said plurality of fields is defined

based on said absolute reference and a second field of said plurality of fields is

defined based on said relative reference *(see column 5, lines 6-23 and lines 58-*

67, Want).

15. The obviousness motivation applied to claims 1, 10, 16 and 22 are applicable

towards their respective dependent claims.

Response to Arguments

Applicant's arguments filed March 24, 2011 have been considered and are deemed

persuasive. In lieu of the arguments, the finality of the last action has been withdrawn, a

new search has been performed and the newly found Philyaw prior art has been

applied. Philyaw explains how the benefit of the beacon transmitting information to a

range of a location is that the users need not transmit their location information; see at

least column 2, lines 3-7 and lines 17-28, Philyaw. This information is used by the user

device to navigate to a location-based website/advertisement.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to AZIZUL CHOUDHURY whose telephone number is

(571)272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Krista Zele can be reached on (571) 272-7288. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. C./
Examiner, Art Unit 2453

/Krista M. Zele/
Supervisory Patent Examiner, Art Unit 2453